LEGISLATION.

DEPUTY PRESIDENT: We will now proceed with the legislativ business.

THE NANJINAD VELLALA BILL.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirka Vakil*): Sir, before the motion for the passing of the Bill—

MR. S. PIRAVIPERUMAL PILLAI (*Commerce and Industry, South*) Under Standing Order 3 (*b*) I wish to bring to the notice of the President a point for ruling. Standing Order 3 (*b*) runs thus:

"The Secretary shall, at least fourteen clear days before the date fixed for each session, send to every member a provisional list of legislative business to be brought forward at a meeting. After sending such provisional list the Secretary shall send to every member a statement of the business to be transacted at such meeting so as to reach his permanent or Trivandrum address at least three clear days before the date of each session."

This session began in November 1925. According to the Standing Order, fourteen clear days' notice is necessary. But this has not been given.

DEPUTY PRESIDENT: Therefore you say the House is not competent to consider the Bill now?

MR. S. PIRAVIPERUMAL PILLAI (*Commerce and Industry, South*): Yes.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That Order no doubt says that a list of business should be sent to every Member fourteen days before the date fixed for each session. But there is no Order or Rule to say that a business shall not be taken up if the list was not sent to a Member. There is a precedent also for this view. During the time of the late President, Mr. Raghaviah, a similar objection was raised. He ruled that the Member had no right to complain in the Council, but that he should prefer a complaint to the President in his chambers. A Member cannot say that a business shall not be taken up in the Council if it has been included in the list of the business for the day. I shall quote his ruling.*

"MR. M. R. MADHAVA VARIAR: Sir, I rise to a point of order. Some of the Members are not supplied with the necessary papers in connection with this Council. Clause (3) of the Standing Orders says:

'The Secretary shall, at least fourteen clear days before the date fixed for each session, send to every member a provisional list of legislative business to be brought forward at a meeting. After sending such provisional list the Secretary shall send to every member a statement of the business to be transacted at such meeting so as to reach his permanent or Trivandrum address at least three clear days before the date of each session.'

Now, we were not aware of the details of the business to be transacted at this session sufficiently early.

PRESIDENT: I think, Mr. Madhava Variar, that it is hardly a point of order arising now. If the Standing Orders are not adhered to, you may bring the matter to my notice either in writing or in chambers, and I will enquire into the matter."

Vide pages 514—515 of Vol. II of the Proceedings dated the 10th April 1923.

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Apart from this precedent, I may bring to your notice Standing Order No. 6 (1).

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : May I ask the Law Member whether the case he has quoted was one where the list of legislative business was not sent? I think it was a question where none of the papers was sent.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : It was exactly similar to this. In fact, the Order quoted by Mr. Piraviperumal Pillai was quoted then also.

Another rule that I wish to bring to your notice is Standing Order No. 6(1) which runs as follows :

"The Dewan after considering the state of business of the Council shall at the commencement of each session allot as many days as are in his opinion compatible with public interests for the business of the non-official members in the Council and may from time to time during the session alter such allotment and on these days such business shall have precedence. At all other times Government business shall have precedence. At times when Government business has precedence, the Secretary may arrange the business of the Council in such manner as the Dewan may direct."

So, the business will be arranged in such manner as the Dewan directs.

Again Standing Order No. 7 (1) says—

"A list of business for the day shall be prepared by the Secretary and circulated to all the members."

And Standing Order No. 7 (2) says—

"Save as otherwise provided, no business not included in the list of business for the day shall be transacted at any sitting without the leave of the President."

Thus the only thing that is necessary under the Standing Orders is that the business should be included in the list of business for the day. There is no provision in the Standing Orders to say that a business shall not be taken up if notice of it is not given fourteen days before the commencement of the session.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*) : May I draw the attention of Mr. Paramesvaran Pillai to Standing Order No. 7 (3) which runs as follows :—

"No business requiring notice shall be set down for a day earlier than the period of the necessary notice."

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : Yes, but that refers to a business which requires notice. The present business is not one of that sort. In fact at the second reading of a Bill, the last motion that is made is that the Bill be taken up and passed at a subsequent meeting. It may be taken up at *any* subsequent meeting after including it in the list of business for the day.

MR. S. PIRAVIPERUMAL PILLAI (*Commerce and Industry, South*) In view of the urgency of the measure, I withdraw my objection.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*) : It is a point of order that he has raised and he cannot withdraw it without the permission of the House.

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DEPUTY PRESIDENT : I have considered his point of order. Rule 3 (*b*) says that the Secretary shall, at least fourteen clear days before the date fixed for each session, send to every member a provisional list of legislative business to be brought forward at a meeting. That evidently contemplates a session consisting of a single series of meetings at a time; and does not contemplate a session consisting of several series of meetings at different intervals. If the interval between the series of meetings is long, it may not be possible to give notice at the beginning of each session of the business to be transacted months later, being continued at different intervals and different meetings. What is contemplated by that rule is that the Members shall have sufficient notice — fourteen clear days—of the business that is going to be transacted at each meeting of the session. The word "*session*" in that rule has to be construed as a single series of *meetings*, in a session, and not as exactly a session proper, which may consist of several series of meetings held at different periods. Therefore, there has been a substantial compliance with the Standing Order when once fourteen clear days' notice has been given before the beginning of this meeting. I think that the motion of Mr. Paramesvaran Pillai is perfectly in order.

Clause 6.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*) : I beg to move the following amendment to Clause 6:—

Omit the words "and when the petitioner is the husband, he shall in all cases, offer in the petition reasonable compensation to the respondent except when the cause of action is based upon sub-clauses (a) to (c) of Clause (iii) of Section 5."

Although my motion is for the total omission of an entire sentence in that clause, it will be seen that the change that I propose is more or less of a verbal nature. The clause in which the sentence occurs deals with the presentation of petitions for divorce either by the husband or the wife, and the sentence that I seek to delete provides that in the case of a petition by the husband he shall offer reasonable compensation to the wife in certain cases. This sentence is not quite necessary in the light of sub-clause (2) of Clause 8. This is how that Clause reads:

"8. Three months after the service of the copy as aforesaid:

(1) if the petition is not withdrawn in the meantime, and if the respondent does not agree to the dissolution of the marriage, the Court shall enquire into the petition and shall allow or dismiss the petition as it thinks fit;

(2) if the petitioner is the husband and his prayer is granted, the Court shall except in cases falling under sub-clauses (*a*) to (*c*) of clause (iii) of Section 5, award such compensation to the wife or such monthly allowance until her remarriage as would be proper under the circumstances having regard to his position, means and circumstances;

(3) if the petitioner is the wife and her prayer is granted, the Court shall award such compensation to the wife or such monthly allowance until her remarriage as would be proper under the circumstances, having regard to the position, means and circumstances of the husband."

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It will be seen from this clause that whether the husband or wife be the petitioner, a money allotment has to be decreed by the court and that a decree of compensation is not indispensable. The decree may be one for monthly allowance alone, after all. Thus no purpose is served by the husband alone being saddled with a statutory duty to offer compensation in a petition for dissolution of marriage. Whether the petition be by the husband or the wife, a money allotment has to be given irrespective of any offer. We do not however impose any duty on the wife such as that she should make a claim for compensation if she happens to be the petitioner. Clause 6 casts a statutory duty on the husband alone to offer compensation, although compensation need not necessarily be decreed by the court. I think therefore that it will be better if that sentence in Clause 6 is omitted as unnecessary. The omission will also harmonise with the provisions of Clause 8.

I may in this connection bring to the notice of the House that the idea of a statutory provision like this first originated in the Nayar Regulation. Then it was found necessary or useful to cast a duty on the husband as according to that Regulation a dissolution may be obtained without stating grounds. Subsequently, when this was changed, this statutory duty was also omitted. The same duty however appears in the Ezhava Regulation according to which divorce can be obtained without stating grounds. But in this Bill, dissolution can be obtained only on certain grounds. I think, therefore, that the sentence may be omitted.

MR. K. GEORGE (*Ag. Chief Secretary to Government*): I second the motion.

MR. M. SIVATANU PILLAI (*Tovala*): I support the motion.

DEPUTY PRESIDENT: I suppose the House accepts the amendment.

The amendment was put and carried.

The Clause as amended was added to the Bill.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I have another amendment to Clause 6, and it runs as follows:—

Number the first paragraph of Clause 6 as Sub-section 1, and for the proviso to Clause 6, substitute the following as sub-section (2):—

"A wife, though a minor, shall be competent herself to apply for dissolution of marriage if she has completed sixteen years of age".

The object of this provision is this. The enacting clause in Clause 6 says that a husband or wife may present a petition for dissolution of marriage. But what would happen if the husband or wife is a minor? Under the Civil Procedure Code he or she cannot act herself but can act only through a guardian. The object of the proviso here is to enable the wife, if she happens to be a minor, to present the petition otherwise than through a guardian. Thus, this is an entirely independent provision; it is hardly a proviso to the enacting clause. The enacting clause provides that a petition may be presented; this clause gives a further right and does not curtail or limit any right that is conferred by

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[Mr. Kayyalam Paramesvaran Pillai.]

the enacting clause. Therefore this may be added as a sub-clause. I therefore move that the proviso may be omitted and in the place of that an independent sub-clause be substituted, *viz.*,

"(2) *A wife, though a minor, shall be competent herself to apply for dissolution of marriage if she has completed sixteen years of age.*"

This may be numbered as sub-clause (2) the previous paragraph being numbered as sub-clause (1).

DEPUTY PRESIDENT: But, even then, I believe you find the very same thing in the Nayar Regulation and the Ezhava Regulation.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes, but I think it will be better to make the change once the point has been noticed.

DEPUTY PRESIDENT: Even if you have it as a sub-clause, would it not be better to have the same wording as in the Nayar Regulation ?

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The wording is the same excepting that the words 'dissolution of marriage' are adopted here instead of 'divorce'. The word 'divorce' does not occur anywhere in this Bill and to keep up uniformity of language the expression 'dissolution of marriage' is introduced.

MR. P. N. KRISHNA PILLAI (*Ag. Secretary to Government*): I beg to second the motion.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): My only difficulty with respect to that suggested amendment is whether it is not better to preserve the same form in all the Regulations on the same subject. In the Nayar Regulation and the Ezhava Regulation we have enacted it by way of a proviso. The inclusion of a proviso does not necessarily mean a curtailment. On the question whether the scope of a proviso is always to curtail the import of the main enacting Section, I have my own doubt. In the other two Regulations we have adopted that form. With respect to the expression "divorce" being replaced by the expression "dissolution of marriage", I agree because the expression as my friend observed is not used in this Bill. It is only the dissolution of marriage that is contemplated. So, I do not think that it is necessary to change the form that has been adopted in two other Regulations. That is all that I would say. I am only throwing it out as a suggestion and not as an objection.

DEPUTY PRESIDENT: I do not think it makes any difference. May I take it that the amendment is accepted by the House ?

The amendment was put and carried

The Clause as amended was added to the Bill.

Clause 8.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The next amendment that I beg to move is with reference to sub-clause (2) of Clause 8 and it runs as follows :—

For the words "except in cases falling under sub-clauses (a) to (c)" the words "in cases falling under sub-clause (d)" be substituted.

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The object of the amendment is this. If the husband happens to be the petitioner, the court may decree a compensation or a monthly allowance in cases where the ground for dissolution of marriage does not happen to be any of those provided by sub-clauses (*a*) to (*c*) of Clause 5. There are five grounds for dissolution of marriage mentioned in Clause 5. They are (*a*) adultery, (*b*) bigamy, (*c*) change of religion, (*d*) incurable disease, physical or mental and (*e*) habitual cruelty to wife. The provision in Clause 8 says that, if the husband is the petitioner, he is bound to give compensation or monthly allowance, except when the petition happens to be presented on any of the first three of the grounds. Then, there are only two grounds left in respect of which the question of awarding compensation or monthly allowance will arise. The two grounds are incurable disease, physical or mental, and habitual cruelty to wife. So, if we accept the wording as it is, the result will be that the husband will be bound to give compensation in cases falling under clauses (*d*) and (*e*). It will therefore imply that the husband can bring the petition for dissolution even under clause (*e*), namely, habitual cruelty to wife. It can hardly be the intention of the Bill to enact that the husband who has been cruel to his wife can himself bring a petition for dissolution. There will therefore be only one Clause, namely Clause (*d*) under which he need pay compensation. Therefore, instead of saying "in all cases excepting (*a*) to (*c*) and (*e*)", I thought it would be better to say "in cases falling under Clause (*d*)". That is also a shorter way of putting the matter. I hope the House will accept that amendment.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): In effect it will be "except in cases falling under sub-clauses (*a*) to (*c*) and (*e*).

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): Yes.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): Cannot a case be contemplated where even though he may have been committing acts of habitual cruelty against his wife, he may put in a petition for dissolution of marriage? There may be exceptional circumstances where this may happen.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I do not think that it is contemplated by the Bill, or that this House will lend its support for such a provision.

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): Can there not be a case where the husband bases his petition on some other ground and then evidence is let in that the husband is treating the wife cruelly?

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): In such cases the husband does not base the petition on ground (*e*).

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): He bases the petition on some other ground but at the same time evidence is let in that there is habitual cruelty to the wife. In such cases, is it not proper that compensation should be given to the wife even though the petition is not based on that ground. If you omit clause (*e*), there will be that difficulty.

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DEPUTY PRESIDENT: If it is not based on (*e*), how will that arise?

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): May there not be cases where she ought to be given compensation even though the petition is not based on (*e*)?

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): If in the petition the husband himself alleges any of the first four grounds and if such grounds are not made out, the petition will be dismissed if the wife does not agree to the dissolution of marriage.

MR. K. I. JOSEPH (*Minachil* cum *Devicolam*): Will there not be cases where the wife ought to be given compensation in any case?

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): The wife may either agree or not agree to the dissolution. If she agrees, the dissolution will be granted. If she opposes, the husband will have to prove the grounds alleged in the petition. The ground provided by Clause (*e*) cannot be one of the grounds alleged by him. If the other grounds alleged are not proved, the petition will be dismissed, so that, the question of cruelty to the wife will not arise in a petition for dissolution of marriage if it is by the husband.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In cases of cruelty by the wife to the husband, is there any objection?

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): That is not contemplated.

MR. P. K. NARAYANA PILLAI (*Ambalapuzha*): In this connection I may be permitted to mention an instance which took place in America where the husband had the right of private defence when the wife proceeded to bite the husband. (*Laughter.*)

DEPUTY PRESIDENT: Is there any objection to accept the amendment proposed?

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I suppose it is a reasonable amendment and it may be accepted.

The amendment was put and carried.

The Clause as amended was added to the Bill.

Clauses 30 and 32.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I have another list of amendments bearing on Clauses 30 and 32 and I may add, also Clause 26. Subsequent to the giving of the notice in regard to these amendments I have had occasion to talk with the learned Deputy President who was in charge of the Bill originally and he seems to think that the amendments I have proposed vary the principle involved in the Bill. And further, the co-opted Members appear to be against these amendments. At a third reading of a Bill it is not usual to vary the principle involved in a Bill, and I do not certainly want to introduce any amendment which is of a controversial nature. But in regard to these Clauses, the Deputy President and the other Members are also of opinion that some amendments are necessary. I would therefore move, if the House agrees with me, that the further consideration of this Bill may be put off till Friday afternoon, after the

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non-official business of that day is over. If there is controversy, no amendments will be moved. Some amendments that will be agreeable to all concerned will be moved.

DEPUTY PRESIDENT: The amendment that he proposes to introduce will be moved on Friday afternoon.

MR. T. J. MATTHEW (*Changanachery cum Peermade*): Suppose the non-official business on that day is not over before five o'clock?

DEPUTY PRESIDENT: It will close at five. As Mr. Paramesvaran Pillai said, if the amendment is of a controversial nature, it will not be moved at all. If it is non-controversial, it will not take more than two minutes and the House will have the opportunity of going through the amendment even before, and judging as to whether it is controversial or not. I do not think there is any serious objection to putting it off to Friday. Otherwise, the matter will have to be adjourned till the next meeting of the Council and I think the community concerned would be put to serious inconvenience. It is arranged that each Member should have a copy of the revised amendment so that all the Members may have the opportunity of seeing how far it goes. Then, may I take it that the House is agreeable to the Bill being put off to another day, let us have it provisionally as Friday?

The House agreed to postpone the discussion of the amendments to Clauses 26, 30 and 32 to another day.

THE CINEMATOGRAPH BILL.

MR. KAYYALAM PARAMESVARAN PILLAI (*Additional Head Sirkar Vakil*): I beg to present the report of the Select Committee on the Cinematograph Bill and beg to move that the Bill as reported be taken into consideration.

MR. P. N. KRISHNA PILLAI (*Ag. Secretary to Government*): I beg to second the motion.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I am just making a suggestion that the consideration of the Bill may not be over by to-day.

DEPUTY PRESIDENT: I do not think that many of the amendments are likely to take a long time at all. We shall get along as far as possible. My own impression is that it would not take a long time. We may now proceed with the amendments.

Clause 1.

MR. G. PARAMESVARAN PILLAI (*Neyyattinkara*): I beg to move the following amendment:—

In lines (1) and (2), substitute the word "Act" for the word "Regulation."

Obviously, the amendment tabled by me does not affect the merits of the Bill, but raises a general question of some constitutional importance. Acts of a legislature are commonly known as 'Acts' as distinguished from 'Regulations' passed by an executive authority or some other body in pursuance to or subject to an Act or Statute passed by the Legislature. In India, especially, the term 'Regulation', for reasons

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